IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1041 OF 2005

Moulasaheb Kasimsaheb Inamdar ... Appellant

V/s

Sayyad Ahmad Kutebealam Bukhari Inamdar. ... Respondent

Mr. T.S. Ingale for the appellant.

Mr. G.M. Savagave for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 21ST SEPT., 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Kolhapur dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Jaysingpur, dismissing the plaintiff's suit for perpetual injunction against the defendant.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for perpetual injunction simplicitor on the ground that the Dargah namely Hajarat Peer Zaria Bukhari having City Survey No. 378, situated at Kanwad, Tal. Shirol, is the suit property. According to the plaintiff he is in exclusive possession of the said property and suit land and defendant was trying to oust him therefrom forcibly, hence the suit was filed.

Defendant contested the suit inter-alia denying all the allegations made by the plaintiff submitting that there was no question of ouster and, therefore, the suit was sought to be dismissed on this and other grounds.

3. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that he was in lawful possession of the suit property. However, it was not proved that defendant was trying to oust him forcibly. Hence the suit was dismissed.

The appeal was carried to the District Court at Kolhapur. The learned Addl. District Judge, after hearing both sides, concurred with the findings recorded by the trial Court and dismissed the appeal. Hence the

present appeal.

4. At the outset, it may be noted that there is no substantial question of law involved in this appeal. Both the Courts below have concurrently recorded the finding to the effect that the plaintiff has failed to prove any obstruction or alleged action for his ouster on the part of the defendant, from the suit property and, as such, the suit had to fail. I am satisfied that both the Courts below have properly appreciated the entire evidence on record and, as such, it deserves no interference.

In the result, the appeal stands dismissed with no order as to costs.

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